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No. [redacted]

PREME COURT, U. S.

IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. [redacted] 114

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SUPREME COURT, U.S.

DESERT OUTDOOR ADVERTISING, INC.,
*Appellant,*

vs.

COUNTY OF SAN BERNARDINO, et al.,
*Appellees.*

On Appeal From the Court of Appeal of the State of California, Fourth Appellate District, Division Two

## MOTION TO DISMISS

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IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 1451

DESERT OUTDOOR ADVERTISING, INC.,
*Appellant,*

vs.

COUNTY OF SAN BERNARDINO, et al.,
*Appellees.*

On Appeal From the Court of Appeal of the State of California, Fourth Appellate District, Division Two

## MOTION TO DISMISS

THE STATUTES INVOLVED are set forth in appellant's jurisdictional statement and so are not repeated herein. The Appendices to that jurisdictional statement do not include all of San Bernardino County Ordinance No. 678, of which Section 15.10 is only a part, or all of the Collier-Z'berg Act of 1967, California Statutes 1967, Chapter 1408. The latter, partly amending California Business and Professions Code, DIVISION 3, Chapter 2 §§ 5200-5325, is more fully set forth in Appendix "A" infra.

## QUESTIONS PRESENTED

Appellee County of San Bernardino moves to dismiss on the grounds that the questions presented are so unsubstantial as not to need further argument, under Rule 16.

The questions presented are:

1. May a local zoning ordinance require the removal of prior, legal-when-installed, billboards, when their respective periods of non-conforming use allowed by the ordinance have expired, without payment of compensation?

2. Does the federal Highway Beautification Act of 1965 preempt the operation of an ordinance such as described in No. 1 supra?

3. May a provision of a local zoning ordinance be valid if such provision is based partly on "aesthetic" considerations?

## STATEMENT OF THE CASE

The appellant is the owner of four billboards located in different places in County of San Bernardino, California, but all located within 500 feet of a freeway. Appellee proceeded with court actions to enforce the provisions of Section 15.10 of San Bernardino County Ordinance No. 678, the zoning ordinance of this County, under the terms of which said four signs became prohibited. The provisions of that section do not present an outright proscription of all billboards along freeways, but permit such in certain zones where other commercial uses are established on adjacent land, near a freeway; however, none of such exceptions are applicable to the four signs in issue.

Incidentally, Section 15.10 paragraph 1 reads:

> "Any advertising structures which become non-conforming shall be removed within three years from the date they become non-conforming."

This paragraph means, of course, that the terms of the section could not initially become operative with regard to any billboard which had been legally installed, but that, after the effective date of the section, plus three years, all billboards under the terms of the section would then become proscribed. This section was enacted in 1958, originally as Section 15.9. It is well recognized that a zoning law may not be enacted which immediately prohibits an otherwise lawful use of land; a certain period must be allowed for continued use, a non-conforming use period. However, at no time has appellant raised an issue as to whether he was deprived of a non-conforming use right, or whether the non-conforming use right in this instance was unreasonable. Instead appellant has, at every stage, attacked this section head on, and has always asserted that Section 15.10 could not be enforced because such a regulation was not permitted to a county in this case, because of state and federal law.

Judgment in the Superior Court of the State of California for the County of San Bernardino was for the appellee, and an injunction issued, ordering appellant to discontinue use of the billboards and to remove the same. This judgment was sustained by the Court of Appeal. A petition for hearing to the Supreme Court of the State of California was denied.

## ARGUMENT

### I.

### AS AN EXERCISE OF THE POLICE POWER, A ZONING REGULATION IS NOT AN EXERCISE OF THE POWER OF EMINENT DOMAIN, AND A LAND USE, INCLUDING BILLBOARDS, MAY BE PROHIBITED OR REQUIRED TO BE TERMINATED THEREUNDER; THEREFORE, A PROPOSITION THAT DAMAGES MUST BE PAID DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

That an otherwise lawful business may be prohibited in a certain area, under a police power measure, was iterated with regard to a brick making plant in a residential district in *Hadacheck v. Sebastian, Chief of Police of the City of Los Angeles*, 239 U.S. 394 (1915), and with regard to drilling for oil in a residential district in *Marblehead Land Co. v. City of Los Angeles*, 47 Fed. Rep. 2d 528 (1931).

Zoning, or control of land use, was fundamentally established against federal objections in *Village of Euclid et al., v. Amber Realty Company*, 272 U.S. 365, 47 S. Ct. 114.

Billboards are also subject to the power to regulate the location of land uses by a local governmental entity, *Cusack Co. v. Chicago*, 242 U.S. 526 (1917); *St. Louis Poster Co. v. City of St. Louis*, 249 U.S. 269 (1919); *New York State Throughway A v. Ashley Motor Court*, 10 N.Y. 2d 151, 218 N.Y.S. 2d 640 (1961).

### II.

### THE FEDERAL HIGHWAY BEAUTIFICATION ACT OF 1965 IS INAPPLICABLE HERE.

NO PROVISION OF THAT ACT PREEMPTS LOCAL ZONING LAW. THE FEDERAL ACT IS IMPLEMENTED BY THE STATE COLLIER-Z'BERG ACT, WHICH ALSO DOES NOT PREEMPT ZONING LAW.

The Federal Act, supra, provides for *state enactments* for implementation.

Section 131 (b) of that Act reads as follows:

> "Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such state under Section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periords as he deems necessary, the application of this subsection to a State."

Section 131 (d) of that Act reads in part as follows:

> "(d) . . . . The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of

the States in this regard will be accepted for the purposes of this Act. . . ."

Section 131 (k) of that Act reads as follows:

"(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section."

The Collier-Z'berg Act of 1967, California Statutes 1967, Chapter 1408, partly amended the California Business and Professions Code DIVISION 3 Chapter 2 §§ 5200-5325.

The following sections from that code show that these provisions do not preempt local zoning laws:

"§ 5227. It is the intention of the Legislature to occupy the whole field of regulation by the provisions of this chapter except that nothing in this chapter prohibits enforcement of any or all of its provisions by persons designated so to act by appropriate ordinances duly adopted by any county of this State nor does anything prohibit the passage by any county of reasonable land use or zoning regulations affecting the placing of advertising displays in accordance with the provisions of the Planning Law, Chapter 1 (commencing with Section 65000) of Title 7 of the Government Code, relating to zoning, or with reference to signs or structures pertaining to the business conducted or services rendered or goods produced or sold upon the property upon which such advertis-

ing signs or structures are placed, ordinances subjecting such signs or structures to building requirements."

"§ 5268. The issuance of a permit for the placing of an advertising structure includes the right to change the advertising copy thereon without obtaining any additional permit for the remainder of the calendar year in which the permit is issued and without the payment of any additional permit fee.

The issuance of a permit does not affect the obligation of the owner of the advertising display to comply with a zoning ordinance applicable to the advertising display under the provisions of this chapter nor does the permit prevent the enforcement of the applicable ordinance by the county."

"§ 5288.6. The provisions of this chapter shall not be construed to permit a person to place or maintain in existence on or adjacent to any street, road or highway, including any interstate or state highway, any outdoor advertising prohibited by law or by any ordinance of any city, county or city and county."

"§ 5294. Nothing in this chapter shall prohibit any county from designating the districts or zones in which advertising displays may be placed or prohibited as part of a county land use or zoning ordinance."

## III.

## THE INCLUSION OF AESTHETIC CONSIDERATIONS IN THE JUSTIFICATION OF A ZONING

PROVISION DOES NOT OFFER A QUESTION OF FEDERAL LAW BUT OF STATE ZONING LAW. THAT SUCH CONSIDERATIONS CAN BE ADDED TO OTHER REASONS FOR THE ZONING LAW IS BEYOND QUESTION.

The Opinion below reads in part as follows:

> "In the case at bench, testimony was taken and several witnesses testified that the absence of billboards along freeways would constitute a beautification which, in turn, would tend to attract tourists, settlers and industries to the county, thus establishing economic benefit as an additional base to sustain the provisions of the zoning ordinance under question. The trial court made a finding as follows: 'Said provision operates to help provide a favorable environment for private industries, in particular the tourist industry, by the regulation of land use.' On the basis of the foregoing authorities, we must hold that the questioned portion of the ordinance is a proper exercise of the police power."

Aesthetic considerations, together with fire protection considerations, were employed in upholding a law providing restrictions on the height of buildings in *Welch v. Swazey*, 214 U.S. 91, 29 S. Ct. 567 (1909).

An ordinance regulating the use of signs on buildings in an historical section of New Orleans was upheld on aesthetic reasons, coupled with the economic consideration of the tourist industry's need for attractiveness, *New Orleans v. Levy*, 223 La. 14, 64 So. 2d 798 (1953).

## CONCLUSION

Appellant's appeal to the United States Supreme Court should be dismissed.

Respectfully submitted,

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By.....
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## APPENDIX "A"

1967 Regular Session



## ADVERTISING—HIGHWAY BEAUTIFICATION

## CHAPTER 1408

### SENATE BILL NO. 636

**An act to add Sections 5207.1, 5207.2, 5207.3, 5207.4, 5207.5, 5207.6, 5207.7, 5207.8, 5207.9, 5213, 5214, 5214.1, 5288.1a, 5288.1b, 5288.2a, 5288.3a, 5288.3b, 5288.3c, 5288.5a, 5288.5b, 5288.5c, 5288.7, and 5311.5 to, and to amend Sections 5206, 5226, 5239, 5286, 5288, 5288.1, 5288.2, 5288.4, and 5288.5 of, the Business and Professions Code, relating to outdoor advertising.**

*The people of the State of California do enact as follows:*

SECTION 1. It is the intention of the Legislature, in enacting this act, to provide for the effective control of outdoor advertising required by the Highway Beautification Act of 1965, Section 131 of Title 23 of the United States Code, as in effect October 22, 1965, and particularly subdivisions (c) and (j) thereof. It is the intention of the Legislature to require that those segments of highways located in this state which are hereinafter referred to as penalty segments and bonus segments conform to the controls required by the said Highway Beautification Act of 1965 and that the bonus segments conform in addition to the controls required by the Federal-Aid Highway Act of 1958, Section 131 of Title 23 of the United States Code, as in effect before October 22, 1965, and the Collier-Z'berg Act, Chapter 128, Statutes 1964 (1st Ex. Sess.), and

by the Agreement for Carrying Out the National Policy Relative to Advertising Adjacent to the National System of Interstate and Defense Highways heretofore entered into pursuant to the said two acts between the United States of America, represented by the Secretary of Commerce, acting through the Federal Highway Administrator and the State of California, acting through the Director of Public Works, to the extent that the said latter controls are "stricter", within the meaning of the Highway Beautification Act of 1965, subdivision (j) of Section 131 of Title 23 of the United States Code, as in effect October 22, 1965.

SEC. 2. Section 5206 of the Business and Professions Code is amended to read:

5206.

The verb, to place and any of its variants, as applied to advertising displays, includes the maintaining and the erection, constructing, posting, painting, printing, tacking, nailing, gluing, sticking, carving or otherwise fastening, affixing or making visible any advertising display on or to the ground or any tree, bush rock, fence, post, wall, building, structure or thing. It does not include any of the foregoing activities when performed incident to the change of an advertising message or customary maintenance of the advertising display.

SEC. 3. Section 5207.1 is added to the Business and Professions Code, to read:

5207.1.

"Interstate highway" means any highway at any time officially designated as a part of the national system of interstate and defense highways by the

director and approved by appropriate authority of the federal government.

SEC. 4. Section 5207.2 is added to the Business and Professions Code, to read:
5207.2

"Primary highway" means any highway, other than an interstate highway, at any time officially designated as a part of the federal-aid primary system by the director and approved by appropriate authority of the federal government.

SEC. 5. Section 5207.3 is added to the Business and Professions Code, to read:
5207.3.

"The Highway Beautification Act of 1965" refers to Section 131 of Title 23 of the United States Code, as in effect October 22, 1965.

SEC. 6. Section 5207.4 is added to the Business and Professions Code, to read:
5207.4.

"The Federal Aid Highway Act of 1958" refers to Section 131 of Title 23 of the United States Code, as in effect before October 22, 1965.

SEC. 7. Section 5207.5 is added to the Business and Professions Code, to read:
5207.5.

"The Collier-Z'berg Act" refers to Chapter 128, Statutes 1964, (First Extraordinary Session).

SEC. 8. Section 5207.6 is added to the Business and

Professions Code, to read:

5207.6

"Bonus segment" means any segment of an interstate highway which was covered by the Federal Aid Highway Act of 1958 and the Collier-Z'berg Act, namely, any such segment which is constructed upon right-of-way, the entire width of which was acquired subsequent to July 1, 1956.

SEC. 9. Section 5207.7 is added to the Business and Professions Code, to read:

5207.7.

"Penalty segment" means any segment of a highway located in this state which was not covered by the Federal Aid Highway Act of 1958 and the Collier-Z'berg Act but which is covered by the Highway Beautification Act of 1965, namely, any segment of an interstate highway which is constructed upon right-of-way, any part of the width of which was acquired prior to July 1,1956, and any segment of a primary highway.

SEC. 10. Section 5207.8 is added to the Business and Professions Code, to read:

5207.8.

"Centerline of the highway" means a line equidistant from the edges of the median separating the main-traveled way of a divided highway, or the centerline of the main-traveled way of a nondivided highway.

SEC. 11. Section 5207.9 is added to the Business and Professions Code, to read:

5207.9.

"660 feet from the edge of the right-of-way" means 660 feet measured from the edge of the right-of-way horizontally along a line normal or perpendicular to the centerline of the highway.

SEC. 12. Section 5213 is added to the Business and Professions Code, to read:

5213.

"Unzoned commercial or industrial area" means an area not zoned under authority of state law in which the land use is characteristic of that generally permitted only in areas which are actually zoned commercial or industrial under authority of state law, embracing all of the land on which one or more commercial or industrial activities are conducted, including all land within 1,000 feet, measured in each direction, from the nearest edge of the commercial or industrial building or activity on such land. As used in this section, "commercial or industrial activities" does not include the outdoor advertising business or the business of wayside fresh-product vending.

SEC. 13. Section 5214 is added to the Business and Professions Code, to read:

5214.

"Business area" means an area within 1,000 feet, measured in each direction, from the nearest edge of a commercial or industrial building or activity and which is zoned under authority of state law primarily to permit industrial or commercial activities or an unzoned commercial or industrial area.

SEC. 13.1 Section 5214.1 is added to the Business and Professions Code, to read:

5214.1.

For the purpose of this chapter only, the word "freeway" means a divided arterial highway for through traffic with full control of access and with grade separations at intersections.

SEC. 14. Section 5226 of the Business and Professions Code is amended to read:

5226.

The provisions of this chapter apply only to the placing of advertising displays within view of * * * highways * * * located in unincorporated areas of this state, except that the placing of advertising displays within 600 feet from the edge of the right-of-way of, and the copy of which is visible from, interstate highways or primary highways, including the portions of such highways located in incorporated areas, shall be governed by this chapter.

SEC. 14.1. Section 5239 of the Business and Professions Code is amended to read:

5239.

A person engages in the business of outdoor advertising whenever he personally or through employees places advertising displays containing advertising which does not pertain exclusively to his own business, or changes the advertising message of such advertising displays.

SEC. 14.2 Section 5286 of the Business and Profes-

sions Code is amended to read:

5286.

No advertising display shall be placed or maintained in any of the following locations or positions or under any of the following conditions or if the advertising structure or sign is of the following nature:

(a) If within the right-of-way of any highway.

(b) If visible from any highway and simulating or imitating any directional, warning, danger or information sign permitted under the provisions of this chapter, or if likely to be mistaken for any such permitted sign, or if intended or likely to be construed as giving warning to traffic, such as by the use of the words "stop" or "slow down."

(c) If within any stream or drainage channel or below the flood water level of any stream or drainage channel where the advertising display might be deluged by flood waters and swept under any highway structure crossing the stream or drainage channel or against the supports of the highway structure.

(d) If not maintained in safe condition.

(e) If visible from any highway and displaying any red or blinking or intermittent light likely to be mistaken for a warning or danger signal.

(f) If visible from any * * * highway which is a part of the * * * interstate * * * or primary systems, and displaying any flashing, intermittent or moving light or lights, or which is placed upon trees, or painted or drawn upon rocks or other natural features, except that any such display visible from a

highway which is a part of the interstate system (and which highway is constructed upon right-of-way the entire width of which was acquired subsequent to July 1, 1956) and lawfully maintained in existence on July 1, 1964, may be maintained in existence until July 1, 1969. Any such display visible from any highway which is part of the interstate system (and which highway is constructed upon the right-of-way any part of which was acquired on or before July 1, 1956) or any highway which is a part of the primary system and which is lawfully maintained in existence on the effective date of the amendment of this subdivision at the 1967 session of the Legislature may be maintained in existence until July 1, 1970.

(g) If any illumination thereon shall be of such brilliance and so positioned as to blind or dazzle the vision of travelers on adjacent highways. * * *

SEC. 15. Section 5288 of the Business and Professions Code is amended to read:

5288.

(a) The regulation of advertising * * * displays adjacent to any * * * interstate highway * * * or primary highway as herein provided is hereby declared to be necessary to promote the public safety, health, welfare, convenience and enjoyment of public travel, to protect public investment in such highways, to preserve the scenic beauty of lands bordering on such highways, and to insure that information in the specific interest of the traveling public is presented safely and effectively, recognizing that a reasonable

freedom to advertise is necessary to attain such objectives. The Legislature finds:

(1) Outdoor advertising is a legitimate commercial use of property adjacent to roads and highways.

(2) Outdoor advertising is an integral part of the business and marketing function, and an established segment of the national economy, and should be allowed to exist in business areas, subject to reasonable controls in the public interest.

(b) Notwithstanding any other provisions of this chapter, no advertising display shall be placed or maintained within 660 feet from the edge of the right-of-way of, and the copy of which is visible from, any interstate or primary highway * * * other than the following:

(1) Directional or other official signs or notices that are required or authorized by law, including, but not limited to, signs pertaining to natural wonders, scenic and historical attractions, and which comply with regulations which shall be promulgated by the director relative to their lighting, size, number, spacing and such other requirements as may be appropriate to implement this chapter, which regulations shall not be inconsistent with such national standards as may be promulgated from time to time by the Secretary of Transportation of the United States pursuant to subdivision (c) of Section 131 of Title 23 of the United States Code.

(2) Advertising displays * * * advertising the

sale or lease of the property upon which they are located, provided all such advertising displays within 660 feet of the edge of the right-of-way of a bonus segment shall comply with the regulations prescribed pursuant to Section 5288.4.

(4) Advertising displays erected or maintained pursuant to regulations of the director, and not inconsistent with the national policy set forth in subdivision (f) of Section 131 of Title 23 of the United States Code and the standards promulgated thereunder by the Secretary of * * * Transportation, and designed to give information in the specific interest of the traveling public. * * *

SEC. 16. Section 5288.1 of the Business and Professions Code is amended to read:

5288.1.

The provisions of Section 5288 shall not apply to * * * bonus segments * * * which traverse and abut on commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to and abutting on the national system of interstate and defense highways is subject to municipal regulation or control, or which traverse and abut on other business areas where the land use, as of September 21, 1959, was clearly established by state laws as industrial or commercial, provided that advertising displays within 660 feet of the edge of the right-of-way of such bonus segments shall be subject to the provisions of Section 5288.1b.

SEC. 17. Section 5288.1a is added to the Business and Professions Code, to read:

5288.1a.

The provisions of Section 5288 shall not apply to penalty segments which are located, or which are to be located, in business areas and which comply with Section 5288.1b, except that Section 5288 shall apply to unzoned commercial or industrial areas in which the commercial or industrial activity ceases and is removed or permanently converted to other than a commercial or industrial activity, and displays in such areas shall be removed not later than five years following the cessation, removal, or conversion of the commercial or industrial activity.

SEC. 18. Section 5288.1b is added to the Business and Professions Code, to read:

5288.1b.

Advertising displays in business areas shall comply with the provisions of this chapter, except the provisions of Section 5288, and shall comply with the following standards:

(a) Advertising displays shall not be placed which exceed 1,200 square feet in area with a maximum height of 25 feet and a maximum length of 60 feet, including border and trim, and excluding base or apron supports and other structural members. This subdivision shall apply to each facing of an advertising display. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof, which will encompass the entire advertisement. Two advertising displays not exceeding 350 square feet each may be erected in a facing. Any advertising display lawfully in existence on August 1, 1967, which

exceeds 1,200 square feet in area, and which is permitted by city or county ordinance, may be maintained in existence.

(b) Advertising displays shall not be placed which are so illuminated that they interfere with the effectiveness of, obscure any official traffic sign, device, or signal; nor shall any advertising display include or be illuminated by flashing, intermittent or moving lights (except that part necessary to give public service information such as time, date, temperature, weather, or similar information); nor shall any advertising display cause beams or rays of light to be directed at the traveled ways if such light is of such intensity or brilliance as to cause glare or to impair the vision of any driver, or to interfere with any drivers' operation of a motor vehicle.

(c) Advertising displays shall not be placed in such a manner as to obstruct, or otherwise physically interfere with, an official traffic sign, signal, or device or to obstruct, or physically interfere with, the vision of drivers in approaching, merging, or intersecting traffic.

(d) No advertising display shall be placed within 500 feet from another advertising display on the same side of any portion of an interstate highway or a primary highway which is a freeway. No advertising display shall be placed within 500 feet of an interchange, or an intersection at grade, or a safety roadside rest area on any portion of an interstate highway or a primary highway which is a freeway and if the interstate or primary highway is located outside the limits of an incorporated city. No advertising display shall be placed within 300 feet from another advertis-

ing display on the same side of any portion of a primary highway which is not a freeway if that portion of the primary highway is located outside the limits of an incorporated city. No advertising display shall be placed within 100 feet from another advertising display on the same side of any portion of a primary highway which is not a freeway if that portion of the primary highway is located inside the limits of an incorporated city. But this subdivision shall not apply to advertising displays which are separated by a building or other obstruction in such a manner that only one display located within the minimum spacing distances set forth herein is visible from the highway at any one time. This subdivision shall not prevent the erection of double-faced, back-to-back, or V-type advertising display, with a maximum of two signs per facing, as permitted in subdivision (a). This subdivision shall not apply to advertising displays permitted by subdivision (b) of Section 5288. The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway. Any advertising display lawfully in existence on August 1, 1967, which does not conform to the provisions of this subdivision but which is permitted by city or county ordinances may be maintained in existence.

SEC. 19. Section 5288.2 of the Business and Professions Code is amended to read:

5288.2.

Any advertising display located within 660 feet of the edge of the right-of-way of, and the copy of which is visible from, any * * * bonus segment, and which

advertising display was lawfully maintained in existence on July 1, 1964, but which is not within one of the classes specified in subdivision (b) of Section 5288 * * * or exempted by Section 5288.1, may be maintained in existence until July 1, 1969, unless required to be removed prior thereto by order of the director; provided that this section shall not apply to advertising displays adjacent to a landscaped freeway.

SEC. 20. Section 5288.2a is added to the Business and Professions Code, to read:

5288.2a.

Any advertising display located within 660 feet of the edge of the right-of-way of, and the copy of which is visible from, any penalty segment, or any bonus segment described in Section 5288.1 which display was lawfully maintained in existence on the effective date of this section but which was not on that date in conformity with the provisions of this article, may be maintained, and shall not be required to be removed until July 1, 1970. Any other sign is lawful when erected, but which does not on January 1, 1968, or any time thereafter, conform to the provisions of this article, may be maintained, and shall not be required to be removed, until the end of the fifth year after it becomes nonconforming; provided that this section shall not apply to advertising displays adjacent to a landscaped freeway.

SEC. 21. Section 5288.3a is added to the Business and Professions Code, to read:

5288.3a.

Each removal ordered by the director, on or after

the effective date of this section, of any of the following advertising displays which is not as of that date in conformity with the provisions of this article shall be deemed a removal under Section 5288.2a and shall be deemed to constitute a taking, within the meaning of the Highway Beautification Act of 1965, subdivision (g) of Section 131 of Title 23 of the United States Code, as in effect October 22, 1965, of all right, title, and interest, including any leasehold interest, of the owner of the advertising display and of the right of the owner of the real property on which the advertising display is located to erect and maintain such advertising display thereon:

(a) Advertising displays lawfully in existence on October 22, 1965.

(b) Advertising displays on real property adjoining a highway made an interstate highway or a primary highway between October 21, 1965, and January 1, 1968, which were lawfully in existence on the date the highway was so classified.

(c) Signs lawfully in existence on, or lawfully erected on or after, January 1, 1968.

If federal law requires the states to pay just compensation with regard to the removal, on or after July 1, 1970, or the end of the fifth year after an advertising display becomes nonconforming, as the case may be, of such advertising displays, owners of such advertising displays which are removed pursuant to this article or owners of the land upon which such displays are located, or both, whichever way the federal law is interpreted, shall be paid just compensation. The sole intent of the Legislature in enacting this paragraph is

to comply with federal law, and it is otherwise not the intent of the Legislature to in any manner relinquish any of its powers relating to the removal of advertising displays under the police power.

SEC. 22. Section 4288.3b is added to the Business and Professions Code, to read:

5288.3b.

The compensation required by Section 5288.3a shall be paid to the person or persons entitled thereto upon filling of a written claim with the director containing such information as the director may reasonably require. The claim for compensation must be filed within 180 days after removal is completed.

SEC. 23. Section 5288.3c is added to the Business and Professions Code, to read:

5288.3c.

If the director and a person who has presented a claim under Section 5288.3b do not reach agreement as to whether compensation is payable under Section 5288.3a or as to the amount of such compensation within 120 days after the filing of such a claim, the claimant may institute an action at law to have his right to such compensation determined. Such an action shall be instituted by the filing of the complaint in the superior court for the county in which the advertising display and the real property are located. The complaint shall be filed not later than one year after the filing with the director of the claim for compensation. Such an action shall be treated in accordance with Title 7 (commencing with Sec. 1237) of Part 3 of the Code of Civil Procedure.

SEC. 24. Section 5388.4 of the Business and Professions Code is amended to read:

5288.4.

Regulations heretofore promulgated by the director concerning interstate highways constructed upon rights-of-way, the entire width of which was acquired after July 1, 1956, shall be continued in effect to the extent necessary to comply with the agreement with the Secretary of Commerce specified in Section 131(j) of Title 23 of the United States Code. The director shall prescribe and enforce regulations for the erection and maintenance of advertising * * * displays permitted by Sections 5288 and 5288.1b consistent with * * * Section * * * 131 of Title 23 of the United States Code and the national standards promulgated thereunder by the Secretary of * * * Transportation; provided, that the director shall not prescribe regulations imposing stricter requirements for the size, spacing or lighting of advertising displays than are prescribed by Section 5288.1b of this chapter and provided that the director shall not prescribe regulations to conform to changes in federal law or regulations made after the effective date of the amendment of this section at the 1967 Regular Session of the Legislature without prior legislative approval.

Notwithstanding any other provisions of this chapter, no outdoor advertising shall be placed or maintained adjacent to any * * * interstate highway or primary highway in violation of the national

standards promulgated pursuant to subsections (c) and (f) of Section 131 of Title 23 of the United States Code, as such standards exist on the effective date of the amendment of this section at the 1967 Regular Session of the Legislature.

SEC. 25. Section 5288.5 of the Business and Professions Code is amended to read:

5288.5.

The director shall seek, and may enter into, agreements with the Secretary of * * * Transportation of the United States and shall take such steps as may be necessary from time to time, and may accept, any allotment of funds as provided by subdivision (j) of Section 131 of Title 23 of the United States Code, as amended from time to time, and such steps as may be necessary from time to time to obtain funds allotted pursuant to Section 131 for the purpose of paying the 75 percent federal share of the compensation required by subdivision (g) of Section 131 of Title 23 of the United States Code.

SEC. 26. Section 5288.5a is added to the Business and Professions Code, to read:

5288.5a.

If compensation is required by federal law, as described in the last paragraph of Section 5288.3a, no advertising display shall be required to be removed pursuant to Section 5288.2a unless and until federal funds for the federal share of compensation therefor, to-wit, 75 percent, required by subdivision (g) of

Section 131 of Title 23 of the United States Code have been appropriated by the federal government and made immediately available to the director and notification of such appropriation and immediate availability has been received by the director. This section shall not apply to the removal of any advertising display for which no federal share is payable.

SEC. 27. Section 5288.5b is added to the Business and Professions Code, to read:

5288.5b.

No advertising display shall be required to be removed pursuant to Section 5288.2a unless and until the expenditure for payments of just compensation therefor in the manner prescribed in Sections 5288.3a, 5288.3b, and 5288.3c has been hereafter authorized by statute, which statute shall designate the source of funds for such payments.

SEC. 28. Section 5288.5c is added to the Business and Professions Code, to read:

5288.5c.

(a) The director shall seek agreement with the Secretary of Transportation of the United States, or his successor, under provisions of Section 131 of Title 23 of the United States Code, to provide for effective control of outdoor advertising substantially as set forth herein, provided that such agreement can vary and change the definition of "unzoned commercial or industrial area" as set forth in Section 5213 and the definition of "business area" as set forth in Section 5214, or other sections related thereto, and provided further that if such agreement does vary from such sections it shall not be effective until the Legislature by

statute amends the sections to conform with the terms of the agreement. If agreement is reached on these terms, the director shall execute the agreement on behalf of the state.

(b) In the event an agreement cannot be achieved under subdivision (a), the director shall promptly institute proceedings of the kind provided for in subdivision (*l*) of Section 131 of Title 23 of the United States Code, in order to obtain a judicial determination as to whether this chapter and the regulations promulgated thereunder provide effective control of outdoor advertising as set forth therein. In such action the director shall request that the court declare rights, status, and other legal relations and declare whether the standards, criteria, and definitions contained in the agreement proposed by the director are consistent with customary use. If such agreement is held by the court in a final judgment to be invalid in whole or in part as inconsistent with customary use or as otherwise in conflict with Section 131 of Title 23 of the United States Code, the director shall promptly negotiate with the Secretary of Transportation, or his successor, a new agreement or agreements which shall conform to this chapter, as interpreted by the court in such action.

SEC. 28.5. Section 5288.7 is added to the Business and Professions Code, to read:

5288.7.

It is declared to be the intent of the Legislature in enacting the provisions of this chapter regulating advertising displays adjacent to highways included in the national system of interstate and defense highways or the federal-aid primary highway system to establish

minimum standards with respect thereto. The governing body of any city, county, or city and county may enact ordinances, including but not limited to land use or zoning ordinances, imposing restrictions on advertising displays adjacent to any street, road, or highway equal to or greater than those imposed by this chapter. The governing body of any city or city and county may enact ordinances requiring licenses or permits, or both, for the placing of advertising displays in view of any highway, including a highway included in the national system of interstate and defense highways or the federal-aid primary highway system, within its boundaries.

SEC. 29. Section 5311.5 is added to the Business and Professions Code, to read:

5311.5.

All advertising displays which were lawfully erected and which are maintained after January 1, 1968, in violation of Sections 5288 or 5288.1b of this chapter or the regulations of the director prescribed hereunder may be removed by the director upon 60 days' prior notice, by certified or registered mail, to the owner thereof. But no notice shall be required to be given to the owner of an advertising display whose name is not plainly displayed thereon. The 60 days shall be computed from the date of mailing.

SEC. 30. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 31. This act shall be known as the Collier-Z'berg Act of 1967.

Approved and filed Aug. 25, 1967.

# PROOF OF SERVICE BY MAIL

1013 a, 2015.5 C. C. P.

RECEIVED
JUN 18 1968
OFFICE OF THE CLERK
SUPREME COURT, U.S.

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } ss

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of 18 years and not a party to the within above-entitled action; my business address is 430 Court Street, San Bernardino, California.

On the 14th day of June, 1968, I served the within

Motion to Dismiss

U.S. Supreme Court No. 1451

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Post Office mail box at San Bernardino, California, addressed as follows:

J. Perry Langford
David K. Kroll
1401 U.S. National Bank Bldg.
San Diego, California 92101

Attorneys for Appellants
1 Copy

Mr. Dennis V. Wardle
County Clerk
County Courthouse
San Bernardino, California 92401
1 Copy

Court of Appeal
303 W. Third Street
San Bernardino, California 92401
3 Copies

United States Supreme Court
Washington, D.C. 20000
40 Copies

I certify or declare under the penalty of perjury that the foregoing is true and correct.

DATED: June 14, 1968

John F. Northland (signed)